

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 781 of 2000()

**S.C. NO. 102/1993 OF ASST. SESSIONS COURT, TIRUR
CRA. NO.186/1994 OF SESIONS COURT MANJERI.**

REVN. PETITIONER: APPELLANT/ ACCUSED

**KELOTHUPARAMBIL KARUNAN,
S/O. VASU, CHEMMANNOOR AMSOM,
KUNNAMKULAM.**

BY ADV. SRI.P.RAMAKRISHNAN NAIR

RESPONDENT: COMPLAINANT

**STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COUR OF KERALA, ERNAKULAM
CRIME NO.22.92 OF TIRUR POLICE STATION.**

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 08 /08 /2007 , THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

CRL.RP. 781/2000

ORDER ON CRL.MP. NO.4164/2000 IN CRL.RP. NO.781/2000

DISMISSED

08.08.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

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K.R.UDAYABHANU, J.

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Crl.R.P.No.781 of 2000 (A)
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Dated this the 8th day of August, 2007

O R D E R

The revision petitioner is the accused who stands convicted for the offence under Section 354 I.P.C and sentenced to undergo rigorous imprisonment for 1'2 years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for two months. The accused was charge sheeted for the offence under Section 376 I.P.C. When it was found that the above offence could not be established, he was convicted for a lessor offence, under Section 354 I.P.C.

2. The prosecution case is that on 21/01/1992, at about 11 a.m., the accused subjected PW.2, a girl, then aged seven years, to sexual intercourse at the house bearing No.446 of one Aramughan. The evidence adduced in the matter consisted of the testimony of PWs.1 to 14 and Exts.P1 to P11 and Mos.1 to 6. PW.1 is the mother of the victim. PW.2 is the victim herself

and PW.3 is the wife of Aramughan and PW.4 is a resident in the neighbourhood. It is the version of the above witnesses that constitute evidence as to the incident. PW.12 is the doctor, who examined PW.2 on the next day of the incident and issued Ext.P11 certificate wherein it is mentioned that there was no external injuries. Ext.P10 is the chemical analysis report of the vaginal swab, as per which no semen was detected. The chemical analysis report of the dress of the accused also states that there was no stains of human semen. The skirt of the girl was positive in this regard, vide Ext.P8, the report of chemical analyst. PW.2, the victim, could not identify the accused. It is the version of PW.3, the wife of Aramughan in whose house the incident took place that establish the identity of the accused. It is the version that he had been to her house to invite for marriage and at that time PW.2, the victim, and her youngest sister were in the courtyard. When she came back after taking bath the children were not found and the accused asked her leave and left the place. The version of PW.1, the mother of the victim, and the version of the victim herself, that is PW.2, contain evidence as to the incident. It is the version of PW.3 that at the

time she left for bath only the accused and the children were in the house. PW.4 has not supported the prosecution. PW.2 has testified as to the incident that she was taken inside and made to lie down and the accused removed her dress and his undergarments and did the rest.

3. I find that the evidence of PW.2 and the evidence of PW.1, the mother, in this regard provide sufficient evidence as to the incident and the evidence as to the identity is contained in the version of PW.3. I find that the finding of the court below is based on convincing evidence. In the circumstances, the conviction is sustained.

4. The counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place in June, 1992 and so far the accused has been facing the ordeal of criminal proceedings and has pleaded that he may not be ordered to be imprisoned. He has also pleaded that the income of the accused is the sole means of livelihood of his family that consisted of his wife, children and ailing parents.

In the circumstances, the sentence is modified to pay a fine of rupees twenty-five thousand and in default to undergo simple imprisonment for six months. The fine, if realised, shall be paid to PW.2. The revision petitioner is granted six months time from today to remit the fine amount.

The criminal revision petition is disposed of as above.

Sd/-

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.781 of 2000 (A)
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O R D E R

9th August, 2007